

1994 SPECIAL SESSION I

INTRODUCED

LD1030721

SENATE BILL NO. 2007

Offered April 20, 1994

A *BILL to amend and reenact § 58.1-1823 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-1823.1, relating to the establishment of a procedure allowing income tax credits for the settlement of certain claims of tax overpayments by federal retirees and refunds upon filing of an amended income tax return.*

Patron—Nolen

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-1823 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-1823.1 as follows:

§ 58.1-1823. Reassessment and refund upon the filing of amended return.

A. Any person filing a tax return required for any tax administered by the Department of Taxation may file an amended return with the Department (i) within three years from the last day prescribed by law for the timely filing of the return; (ii) within ninety days from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, whichever is later, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction; or (iii) within one year from the filing of an amended Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended return. If the Department is satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the original return exceeds the proper amount, the Department may reassess the taxpayer and order that any amount excessively paid be refunded to him. The Department may reduce such refund by the amount of any taxes, penalties and interest which are due for the period covered by the amended return, or any past-due taxes, penalties and interest which have been assessed within the appropriate period of limitations. Any order of the Department denying such reassessment and refund, or the failure of the Department to act thereon within three months shall, as to matters first raised by the amended return, be deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under this chapter.

B. Notwithstanding the time limitation contained in subsection A, an amended individual income tax return claiming a refund for taxes paid with respect to retirement or pension benefits received from a federal retirement system created by the federal government for any officer or employee of the United States, including the United States Civil Service, the United States Armed Forces, or any agency or subdivision thereof for any taxable year beginning on or after January 1, 1985, may be filed within one year from the entry of a final judicial order of a court of competent jurisdiction not subject to further appeal resolving the issue of the application to Virginia income tax law of the United States Supreme Court decision in the case of *Davis v. Michigan Department of the Treasury*, 57 U.S.L.W. 4389 (U.S. March 28, 1989).

C. Notwithstanding the statute of limitations established in this section, any retired employee of a political subdivision of the Commonwealth, established pursuant to Chapter 627 of the 1958 Acts of Assembly may file an amended individual income tax return until May 1, 1990, for taxable years beginning on and after January 1, 1985, and before January 1, 1986, for taxes paid on retirement income exempt pursuant to § 58.1-322.

§ 58.1-1823.1. *Settlement procedure for certain tax overpayment claims by federal retirees.*

A. For purposes of this section:

"Claimant" means any person who paid individual income tax to the Commonwealth of Virginia on retirement income and who seeks a refund of said taxes.

"Department" means the Virginia Department of Taxation.

"Retirement income" means retirement or pension benefits received during taxable years beginning on or after January 1, 1985, but before January 1, 1989 from a federal retirement system created by the federal government for any officer or employee of the United States, including the United States Civil Service, the United States Armed Forces, or any agency or subdivision thereof.

"Settlement amount" means the total amount to be credited to a claimant in settlement of all claims for the refund of taxes paid to the Commonwealth of Virginia on retirement income and does not include any interest on payments made by a claimant to the Department.

B. On or after August 1, 1994, the Department shall (i) provide notice by direct mail to each known

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60 claimant of the Department's calculation of the claimant's tax overpayment, the claimant's proposed
61 individual settlement amount, and the terms of the settlement agreement, and (ii) provide with the notice
62 a form settlement agreement reflecting the provisions of the Federal Retirees Tax Settlement Act. Any
63 claimant who chooses to enter into the proposed settlement agreement may do so by signing and timely
64 filing such form agreement with the Department in the manner provided in subsection H.

65 C.1. Any claimant who disagrees with the retirement income or tax payments from which the
66 Department calculated the settlement amount stated in the notice prescribed in subsection B may protest
67 the settlement amount. A protest must be filed with the Department. Filing shall be deemed sufficient if
68 it is mailed to the Department, postage prepaid, and postmarked no later than September 1, 1994. A
69 protest must include documentary evidence indicating that a different settlement amount is due. Such
70 evidence must be sufficient for the Department to resolve the protest.

71 2. No later than October 15, 1994, after considering a claimant's protest, the Department shall give
72 notice to the claimant of the final proposed settlement amount. This notice shall be given in the manner
73 prescribed in clauses (i) and (ii) of subsection B. Thereafter, a claimant who chooses to enter into the
74 settlement agreement for the settlement amount may do so by signing and timely filing such agreement
75 with the Department in the manner provided in subsection H. Otherwise, such claimant's exclusive
76 remedy is to file or continue to prosecute an action pursuant to subsection F.

77 D.1. On or after August 1, 1994, the Department shall make efforts to notify all claimants who are
78 not notified pursuant to subsection B. Such notification shall be made by publication in newspapers of
79 general circulation meeting the requirements for publication of legal notices, and by such other
80 measures as the Department may deem appropriate. Any claimant who wishes to enter into a settlement
81 agreement but who does not receive individual notice of a settlement amount pursuant to subsection B,
82 shall obtain an uncompleted settlement agreement form from the Department. The claimant shall
83 calculate a settlement amount in accordance with the Federal Retirees Tax Settlement Act, attach
84 supporting documentary evidence, sign and file the settlement agreement by mailing it to the
85 Department, postage prepaid and postmarked no later than September 1, 1994.

86 2. If the Department does not agree to the amount claimed by a claimant who initiates a claim
87 pursuant to this section, the Department shall provide to the claimant, no later than October 15, 1994,
88 final notification of the proposed settlement amount, based upon the Department's consideration of the
89 claim. This notice shall be given in the manner prescribed in clauses (i) and (ii) of subsection B.
90 Thereafter, a claimant who chooses to enter into the settlement agreement for the settlement amount
91 determined or agreed to by the Department can do so by signing and timely filing such agreement with
92 the Department in the manner provided in subsection H. Otherwise, such claimant's exclusive remedy is
93 to file or continue to prosecute an action pursuant to subsection F.

94 E. Notwithstanding any other provision of law or rule of court, the Commonwealth shall be
95 authorized to communicate individually with any claimant to inform him of the provisions of this section
96 and the Federal Retirees Tax Settlement Act.

97 F.1. Notwithstanding any other provision of law, a claimant who does not choose to enter into a
98 settlement agreement for the settlement amount may, in accordance with § 58.1-1825 of the Code of
99 Virginia, file or continue to prosecute an action for the recovery of Virginia income taxes paid on
100 retirement income received. Any action filed pursuant to this subsection shall be filed in the Circuit
101 Court of the City of Richmond on or before the close of business, November 15, 1994.

102 2. Notwithstanding any other provision of law or rule of court, the time within which the defendant
103 must file a pleading in response to actions filed pursuant to this act shall be sixty days after the
104 Department accepts service of process.

105 3. Any action filed pursuant to this section shall be referred to a special commissioner whose powers
106 and duties shall be provided in the order of reference entered by the court in making the appointment.
107 The special commissioner shall submit a report to the court recommending final disposition of actions
108 referred to him. The expenses and fees of the special commissioner shall be approved by the court and
109 paid from appropriations made by the General Assembly for administration and implementation of this
110 section and the Federal Retirees Tax Settlement Act.

111 G. Any claimant not pursuing the remedies as set forth in subsections B, C, D and F shall be forever
112 barred from claiming any refund of Virginia income taxes paid on retirement income.

113 H. No settlement agreement shall be effective unless it is filed, by mail or personal delivery, with the
114 Department no later than November 15, 1994. A settlement agreement shall be deemed timely filed if it
115 is mailed to the Department, postage prepaid, and postmarked no later than November 15, 1994.